

Message Text

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ACTION DLOS-04

INFO OCT-01 IO-11 ISO-00 AF-06 ARA-06 EA-07 EUR-12 NEA-10

ACDA-07 AGR-05 AID-05 CEA-01 CEQ-01 CG-00 CIAE-00

CIEP-01 COME-00 DODE-00 DOTE-00 EB-07 EPA-01 ERDA-05

FMC-01 TRSE-00 H-02 INR-07 INT-05 JUSE-00 L-03

NSAE-00 NSC-05 NSF-01 OES-06 OMB-01 PA-01 PM-04

PRS-01 SP-02 SS-15 USIA-06 SAL-01 FEA-01 OIC-02 /154 W
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R 101827Z APR 76

FM USMISSION USUN NEW YORK

TO SECSTATE WASHDC 6802

C O N F I D E N T I A L SECTION 1 OF 2 USUN 1496

FROM LOSDEL

ATTN: L-MR. LEIGH, ARA-MR. ROGERS, IO, D/LOS, EA, L/OES-
COLSON

PLEASE PASS DEFENSE, INTERIOR, COMMERCE AND OM B

E.O. 11652: GDS

TAGS: PLOS

SUBJECT: LOS - PUERTO RICO, MICRONESIA, AND U.S. TERRI-
TORIES AND POSSESSIONS

1. SUMMARY. USDEL CANNOT RECONCILE USG DESIRE TO DELETE
ARTICLE 136 OF SINGLE NEGOTIATING TEXT WITH DEMANDS OF
MICRONESIAN AND PUERTO RICAN REPRESENTATIVES HERE. PUERTO
RICAN REP ON USDEL PRESENTING DIFFERENT POSITION FROM US TO
FOREIGN DELS. REQUEST DEPARTMENT ADVISE. END SUMMARY.

2. SNT ARTICLE 136 VESTS OFFSHORE RESOURCE RIGHTS OF CER-
TAIN CLASSES OF DEPENDENCIES IN THE LOCAL INHABITANTS,
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"TO BE EXERCISED BY THEM FOR THEIR OWN BENEFIT." U.S.

TRUST TERRITORY, WHICH ATTENDS LOS CONFERENCE AS OBSERVER SEPARATE FROM USDEL, HAS CONSISTENTLY PRESSED OTHER DELS FOR INCLUSION OF ARTICLE 136, PARTICULARLY IN LIGHT ASSERTED "CONFLICT OF INTEREST" WITH U.S. ON TUNA. RICHARD COPAKEN (COVINGTON AND BURLING), EXPERT ON USDEL PURSUANT TO REQUEST OF GOVERNOR OF PUERTO RICO, PRESSING STRONGLY FOR INCLUSION OF AMENDED VERSION OF ARTICLE 136 THAT WOULD APPLY TO PUERTO RICO WITHOUT IMPLICATION THAT PUERTO RICO IS "UNDER FOREIGN OCCUPATION OR COLONIAL DOMINATION." HE HAS ADMITTED APPROACHING FOREIGN DELS WITH HIS SUGGESTIONS. HE SAID THE SECRETARY EXPRESSED SYMPATHY FOR THE GOVERNOR'S PROBLEM AT RECEPTION HERE APRIL 8.

3. IMMEDIATE ISSUE IS WHETHER COPAKEN CAN PRESS PR POSITION ON ARTICLE 136. USDEL DEPUTY CHIEF OXMAN HAS ASKED HIM TO STOP PENDING INSTRUCTIONS FROM DEPARTMENT, EXCEPT THAT HE MAY INFORM OTHERS THAT GOV OF PR IS NOT HAPPY WITH 136 AS DRAFTED, WHICH IS NOT INCONSISTENT WITH U.S. POSITION. COPAKEN CLEARLY INDICATED THAT PR MIGHT HAVE TO SEEK SEPARATE MEANS AT CONFERENCE TO PRESENT ITS VIEWS ON 136 IN LIGHT CONFLICT OF INTEREST WITH U.S. IF IT COULD NOT DO SO AS PART OF USDEL, NOTING THIS WOULD NOT BE BEST RESULT FOR EITHER U.S. OR PR. WHILE USDEL EMPHASIZES UNDESIRABILITY OF USDEL MEMBERS SPEAKING WITH MORE THAN ONE VOICE, AND PROBLEMS THIS MAY CREATE WITH OTHER PUBLIC REPS ON USDEL, AMB LEARSON WOULD NOT OBJECT TO DEPARTMENT DECISION TO PERMIT PR REPS TO PRESENT HIS VIEWS ON 136 ONLY TO OTHER DELS, MAKING CLEAR HE IS SPEAKING ONLY FOR GOVERNOR OF PR, IT THIS IS DEEMED THE LEAST UNDESIRABLE SOLUTION. REQUEST ADVICE BEFORE WE SEE COPAKEN AGAIN WEDNESDAY ON THIS MATTER.

4. MORE DIFFICULT ISSUE IS WHAT TO DO ABOUT ARTICLE 136. IT IS NOT LIKELY WE CAN ACHIEVE DELETION OF 136, AT LEAST WITHOUT MAKING A MAJOR POLITICAL PUSH. WHATEVER OUR ARGUMENTS, THE ATTEMPT ALONE MAY EXPOSE US TO FOREIGN ATTACK. SOVIETS WILL NOT SUPPORT OUR EFFORT TO DELETE IT. ON THE OTHER HAND, INCLUSION OF 136 IN ANY FORM
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COULD COMPLICATE U.S. RATIFICATION OF TREATY, POSSIBLY FRENCH, AND PERHAPS BRITISH AS WELL.

5. THE BROADER POLICY ISSUES DIRECTLY AFFECTING THE U.S. RAISED BY ARTICLE 136 INCLUDE:

(A) OUR FUTURE POLITICAL RELATIONSHIP WITH THE TTPI, MARIANAS, PUERTO RICO, AND TERRITORIES AND POSSESSIONS,

AND ITS EFFECT ON OUR FOREIGN RELATIONS.

(B) OUR INTEREST IN OFFSHORE RESOURCES OFF THESE AREAS AND THEIR ADMINISTRATION, AND IN THE LOCAL ECONOMIES.

(C) THE POLITICAL EFFECT OF THE ARTICLE ON THE DIVISION OF RIGHTS TO AND BENEFITS FROM OFFSHORE RESOURCES BETWEEN THE FEDERAL GOVERNMENT AND THE STATES, AND OTHER POTENTIAL POLITICAL EFFECTS IN THE STATES (E.G. ALASKA).

(D) THE IMPLICATION OF DEALING WITH THIS ISSUE IN A MULTILATERAL TREATY.

IT SHOULD BE NOTED THAT 136 RAISES INDIRECT FOREIGN POLICY PROBLEMS FOR THE U.S. AS WELL:

(1) ITS EFFECT ON INTERNATIONAL LAW REGARDING OCCUPATION (INCLUDING THE EFFECT IN THE MIDDLE EAST); (2) THE EFFECT OF PARA 2 (ARGENTINA INSTIGATED) ON THE FALKLAND ISLANDS DISPUTE; (3) THE QUESTION OF WHETHER ANY ARTICLE ALONG THESE LINES, PARTICULARLY WITH THE PR AMENDMENTS, MIGHT ENCOURAGE CENTRIFUGAL TENDENCIES, PARTICULARLY WHERE THEY ALREADY EXIST, IN FEDERALLY ORGANIZED AND OTHER STATES (E.G. CANADA, UK, AUSTRALIA, FAROES, AZORES, CANARIES, GREENLAND).

6. NEITHER THE MICRONESIANS NOR COPAKEN HAVE BEEN OVERLY RESPONSIVE TO SUGGESTION THAT MATTER BE TAKEN UP AS LEGISLATIVE ONE WITHIN U.S., AND THAT ARTICLE 136 SHOULD BE DELETED. COPAKEN DOUBTS HOUSE OF REPRESENTATIVES WOULD GIVE PR WHAT IT WANTS, WHILE HE BELIEVES SENATE IS CONFIDENTIAL

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MORE SYMPATHETIC. MOREOVER, BOTH OBVIOUSLY WISH TO RIDE WHAT THEY ANTICIPATE WILL BE PRESSURE TO RATIFY TREATY FOR LOS REASONS.

7. COPAKEN SAID THAT FAILURE TO GIVE PUERTO RICO THE CONTINENTAL SHELF (AND ITS POTENTIAL OIL) WOULD PLAY INTO HANDS OF LEFTIST ADVOCATES OF INDEPENDENCE AND ULTIMATELY LEAD TO "MESSY" BREAK BETWEEN U.S. AND PR IN WHICH WE WOULD LOSE THE RESOURCES AS WELL AS OUR POLITICAL AND DEFENSE INTEREST IN PR. HE SAID THE GOVERNOR SAID HE WOULD HAVE "NO CHOICE" HIMSELF BUT TO FAVOR INDEPENDENCE IF PR DID NOT GET CONTROL OF THE SHELF. EVEN IF UNDER PR CONTROL, A 12-MILE TERRITORIAL SEA WOULD ONLY GIVE ABOUT 15 PERCENT OF THE ANTICIPATED OIL. WHEN OXMAN NOTED THAT LEASING REVENUES ON OIL ARE ONLY A

SMALL PART OF ECONOMIC BENEFIT TO COASTAL AREAS OF OFF-SHORE OIL DEVELOPMENT, COPAKEN SAID LEASING REVENUES IMPORTANT, AND THAT POLITICAL ISSUE VERY IMPORTANT. WITH RESPECT TO LEASING REVENUES, COPAKEN NOTED THIS WOULD MERELY REDUCE BURDEN ON USG, WHICH CURRENTLY PUMPING IN \$2 BILLION IN VARIOUS FEDERAL PROGRAMS.

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PRS-01 SP-02 SS-15 USIA-06 SAL-01 FEA-01 OIC-02 /154 W

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R 101827Z APR 76

FM USMISSION USUN NEW YORK

TO SECSTATE WASHDC 6803

C O N F I D E N T I A L SECTION 2 OF 2 USUN 1496

FROM LOS DEL

ATTN: L-MR. LEIGH, ARA-MR. ROGERS, IO, D/LOS, EA, L/OES-COLSON

PLEASE PASS DEFENSE, INTERIOR, COMMERCE AND OM B

8. COPAKEN GAVE OXMAN FOLLOWING DRAFT DATED APRIL 5:

STATEMENT AND SUGGESTIONS OF THE COMMONWEALTH OF PUERTO RICO ON ARTICLE 136 (SUBMITTED BY

ARTICLE 136 OF THE SINGLE NEGOTIATING TEXT IS PRESENTLY LIMITED IN ITS SCOPE TO "TERRITORIES UNDER

FOREIGN OCCUPATION OR COLONIAL DOMINATION," VESTING IN THE INHABITANTS THEREOF THE RESOURCE RIGHTS TO BE RECOGNIZED BY THE CONVENTION. SUCH FORMULATION COULD RESULT IN THE UNJUST EXCLUSION OF THE PEOPLES OF OTHER AREAS FROM ENJOYMENT OF THE BENEFITS TO BE CONFERRED BY THE CONVENTION. IT IS VERY STRONGLY THE VIEW OF THE
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COMMONWEALTH OF PUERTO RICO THAT THE ARTICLE SHOULD NOT BE SO RESTRICTIVE, BUT RATHER BROADENED TO BENEFIT ALL PEOPLES NOT ENJOYING OR NOT CHOOSING TO EXERCISE, FOR WHATEVER REASONS, ALL THE PREROGATIVES OF INDEPENDENT, SOVEREIGN STATES. SO ENLARGED IT WOULD COMPREHEND ASSOCIATED STATES UNDER VARIOUS JURIDICAL ARRANGEMENTS, TERRITORIES THAT ARE INTERNALLY SELF-GOVERNING BUT AFFILIATED WITH METROPOLITAN POWERS IN COMMONWEALTH OR SIMILAR STATUS, AND REMAINING UNITED NATIONS TRUST TERRITORIES, AS WELL AS ANY TERRITORIES PRESENTLY ACKNOWLEDGED TO BE UNDER FOREIGN OCCUPATION OR COLONIAL DOMINATION.

PUERTO RICO, OF COURSE, HAS A VITAL SELF-INTEREST IN THE OUTCOME OF THE NEGOTIATIONS ON ARTICLE 136. AS A RESULT OF A PLEBISCITE, THE COMMONWEALTH IS CURRENTLY ENGAGED IN NEGOTIATING A NEW COMPACT WITH THE UNITED STATES, WHEREBY IT WILL CLARIFY AND PERFECT ITS STATUS AS A FREE ASSOCIATED STATE. THE ISLAND OF PUERTO RICO AND ADJACENT ISLANDS COMPRISE A SMALL AND EXTREMELY DENSELY POPULATED TERRITORY, WITH WIDESPREAD POVERTY AND MASSIVE UNEMPLOYMENT. RECOGNITION AND ESTABLISHMENT IN THE INHABITANTS OF PUERTO RICO OF THE RESOURCE RIGHTS RECOGNIZED BY THE CONVENTION WOULD NOT ONLY BE APPROPRIATE IN VIEW OF ITS PARTICULAR POLITICAL STATUS, BUT COULD ALSO RENDER IT LESS CRITICALLY RELIANT ON EXTERNAL SUBSIDIZATION.

CONSEQUENTLY, IN ORDER TO FACILITATE THE ACHIEVEMENT OF CONSENSUS ON THE ISSUE OF TERRITORIES, IN ADDITION TO THE BASIC GOAL OF SECURING A MORE EQUITABLE AND JUST INTERNATIONAL REGIME, IT IS SUGGESTED THAT THE SCOPE OF THE FIRST PARAGRAPH OF ARTICLE 136 SHOULD BE EXPANDED. ON BEHALF OF PUERTO RICO, AND IN THE INTEREST OF OTHER TERRITORIES WITH SIMILAR PROBLEMS, THE FOLLOWING FORMULATION IS PROPOSED:

"PART X. TERRITORIES AND ASSOCIATED STATES

ARTICLE 136

(1). IN THE CASE OF A TERRITORY UNDER FOREIGN OCCUPATION
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OR COLONIAL DOMINATION, OR A UNITED NATIONS TRUST TERRITORY, OR A TERRITORY WHOSE PEOPLE HAVE NOT ATTAINED EITHER FULL INDEPENDENCE OF SOME OTHER SELF-GOVERNING STATUS RECOGNIZED BY THE UNITED NATIONS, OR AN ASSOCIATED STATE OR OTHER TERRITORY WHICH HAS ATTAINED INTERNAL SELF GOVERNMENT, THE RIGHTS TO RESOURCES RECOGNIZED OR ESTABLISHED BY THE PRESENT CONVENTION SHALL VEST IN THE INHABITANTS OF THAT TERRITORY OR ASSOCIATED STATE."

9. MAKING CLEAR HE HAD NO RPT NO AUTHORITY TO NEGOTIATE TEXT, OXMAN NOTED THAT SUBSTITUTING "SIMILAR" FOR "OTHER" IN PHRASE "ASSOCIATED STATE OR OTHER TERRITORY", AND INSERTING THE WORDS "ALL BENEFITS FROM THE EXERCISE OF" BEFORE "THE RIGHTS TO RESOURCES", COULD IMPROVE CHANCES OF SUCCESS IN WASHINGTON SINCE: (1) IT DID NOT NECESSARILY IMPLY RIGHT TO ARREST FOREIGN VESSELS, (2) DID NOT TOTALLY PRECLUDE SOME FEDERAL ADMINISTRATIVE ROLE, AND (3) MIGHT MAKE IT SLIGHTLY EASIER TO DEAL WITH DOMESTIC CONCERN THAT ANY ARTICLE 136 OR SIMILAR ARRANGEMENT COULD REOPEN DEMAND BY THE STATES TO EXTEND THEIR CONTROL OVER CONTINENTAL SELF. COPAKEN SEEMED RESPONSIVE. HE STRONGLY RESISTED ANY ATTEMPT TO CHANGE WORD "VEST," FEELING THIS WAS THE ESSENCE OF THE POLITICAL PROBLEM.

10. WE ARE LIKELY TO COME TO ARTICLE 136 IN COMMITTEE 2 IN ABOUT 2 WEEKS, AS IT IS THE PENULTIMATE ARTICLE. UNDER THE "SILENCE IS CONSENT TO THE EXISTING TEXT" RULE, FEW STATES ARE LIKELY TO SPEAK. WE COULD PROPOSE DELETION, AND DEAL WITH POLICY PROBLEMS AGAIN BEFORE THE SUMMER SESSION. HOWEVER, IT IS LIKELY THE PR REP WOULD ASK US FOR THE OPPORTUNITY TO PRESENT ITS AMENDMENT TO COMMITTEE II AT THE SAME TIME. ACCORDINGLY, IF IT IS LIKELY WE CAN GO ALONG WITH SOME KIND OF ARTICLE 136, IT WOULD BE PREFERABLE TO NEGOTIATE A TEXT WITH PR NOW. WE COULD STILL OPPOSE 136 AND LET PR REP SPEAK AND PRESENT TEXT, OR SIMPLY LET PR REP SPEAK. COPAKEN HIMSELF SAID ACTIVE US SUPPORT FOR PR MIGHT NOT BE TACTICALLY WISE ANYWAY.
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